

W. E. HESTER, JR.

IBLA 75-245

Decided February 12, 1975

Appeal from the November 27, 1974, decision of the Eastern States Land Office, Bureau of Land Management, denying reinstatement of oil and gas lease ES 4404.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence.

APPEARANCES: W. E. Hester, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

W. E. Hester, Jr., appeals from the November 27, 1974, decision of the Eastern States Land Office, Bureau of Land Management (BLM), which rejected his petition for reinstatement of oil and gas lease ES 4404. The lease had expired by operation of law for failure to pay the advance rental on or before the anniversary date as provided in 30 U.S.C. § 188(b) (1970) and 43 CFR 3108.2-1(a). The anniversary date was October 1, but the payment was not received until the next day, October 2, 1974.

[1] An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only upon a showing by the lessee that his failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1972); 43 CFR 3108.2-1(c); Louis Samuel, 8 IBLA 268 (1972).

Reasonable diligence has been defined both by case law, Louis Samuel, supra, and regulation, 43 CFR 3108.2-1(c), to mean that the lessee has sent or delivered the payment sufficiently in advance of

the anniversary date to account for normal delays in the collection, transmittal and delivery of the payment, considering, among other things, the distance involved. Appellant states that he mailed the payment from Jackson, Mississippi, on September 30, 1974, to the Eastern States Land Office in Silver Spring, Maryland. Appellant further states that if mail delivery were "prompt," the payment would have been received on time. Mailing a payment the day before it is due does not take into account normal delays in the transmission of mail. John Rusiniak, 10 IBLA 74 (1973); see also Alfred B. Tyler, Executor, 13 IBLA 316 (1973). Consequently, appellant has not shown that he exercised reasonable diligence in posting the payment.

Failure to exercise reasonable diligence may be considered justifiable if for good reason beyond control of the lessee he was prevented from making the payment on time. For example, in John Rusiniak, *supra*, appellant was prevented from making timely payment by severe illness. Appellant states he is First Vice President of the United States Lawn Tennis Association and he anticipates that he will eventually become president of the Association. He states that the position he holds is unsalaried and very time consuming. During the month of September, most of appellant's time was consumed by his duties in connection with tennis tournaments in New York and association business in Chicago. Appellant states that he returned home to Mississippi on Friday, September 27, 1974, and immediately sent the payment when he got to his office on Monday, September 30, 1974. Appellant states that, "While I cannot say that the late payment of the rental was justifiable, I do feel the facts involved in causing the delay was ordinarily beyond my control and that extenuating and unusual circumstances did occur." Appellant is correct that his late payment of the rentals is not "justifiable", as the Board is bound to construe the term. His activities on behalf of the United States Lawn Tennis Association do not come within the ambit of "reasons beyond the control" of a lessee. Such reasons include severe illness, natural disaster, or the death of a member of the immediate family. See Louis Samuel, *supra*; R. G. Price, 8 IBLA 290, 292 (1972). The voluntary absence of a lessee from his home or office at a time near the date of a rental payment cannot constitute justification for a tardy tender. See Robert C. Nininger, 16 IBLA 200 (1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Joseph W. Goss  
Administrative Judge

Martin Ritvo  
Administrative Judge

18 IBLA 422

